

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TERRELL JACKSON
Claimant

VS.

SAVAGE INDUSTRIES, INC.
Respondent

AND

**ACE FIRE UNDERWRITERS INS. CO. &
INS. CO. OF STATE OF PENNSYLVANIA**
Insurance Carriers

Docket No. 1,045,842

ORDER

Respondent and one of its workers compensation insurance carriers, Ace Fire Underwriters Insurance Company (Ace), appealed the February 5, 2010, preliminary hearing Order entered by Administrative Law Judge (ALJ) Thomas Klein.

ISSUES

Neither respondent, nor its two workers compensation insurance carriers dispute that claimant injured his right knee at work on February 17, 2009, when he slipped and fell while descending a ladder. But respondent and both carriers deny that claimant injured his back in that accident and further deny that claimant's present back symptoms are the direct and natural result of his right knee injury.

In the preliminary hearing Order, the ALJ found claimant's low back symptoms were the direct and natural consequence of the February 17, 2009, accident. And as Ace was respondent's workers compensation insurance carrier on that date, the ALJ concluded respondent and Ace were responsible for the benefits related to claimant's back.

Ace, whose coverage period ended March 31, 2009, contends claimant failed to prove he injured his back at work. But if he did, Ace contends respondent's other workers compensation insurance carrier, Insurance Company of the State of Pennsylvania (Penn),

should be responsible for both claimant's back injury and knee injury under the last exposure rule. In the alternative, Ace maintains Penn (whose coverage began on April 1, 2009) should be held responsible for claimant's back injury as it resulted from a series of micro-traumas having an accident date of May 27, 2009, pursuant to K.S.A. 44-508(d). In short, Ace argues claimant's back complaints are not related to work, but if so, those complaints are Penn's responsibility.

Penn likewise disputes that claimant injured his back as a result of the February 17, 2009, accident. In the alternative, Penn maintains claimant's back symptoms are the natural and probable consequence of his right knee injury and, therefore, Ace is responsible for both injuries. Accordingly, Penn argues claimant's back symptoms are not related to work, but if so, Ace is responsible as February 17, 2009, is the appropriate accident date.

Finally, claimant contends the Order should be affirmed. Claimant maintains his back complaints are the direct and natural result of his February 17, 2009, accident and a resulting altered gait.

The issue before the Board on this appeal is whether claimant's present back complaints are a natural consequence of his February 17, 2009, accident and his resulting right knee injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Undersigned Board Member makes the following findings of fact and conclusions of law:

Respondent employed claimant as a truck driver and had him hauling slag from a refinery in Coffeyville, Kansas, to Chanute, Kansas, for disposal. On February 17, 2009,¹ claimant injured his right knee when he slipped while climbing down a ladder after shoveling out his trailer. Claimant caught his right foot in the ladder and twisted his right leg before falling to the ground and landing on his back. He experienced immediate pain and swelling in his right knee.

The next morning, claimant reported the accident to his supervisor, Jerry Daniel. Mr. Daniel took claimant to the company doctor, where he saw Jack Bell, a physician assistant (PA). The PA prescribed heat, ice, and light duty work.

Claimant initially returned to his regular job. But his knee symptoms worsened and the PA recommended lighter work. Claimant then was given the job of driving around the refinery doing safety inspections. On May 22, 2009, claimant was terminated. Claimant

¹ The record indicates the accident actually occurred on February 16, 2009, as February 17 was the date that claimant first sought medical treatment.

maintains that as he continued to work he told Mr. Daniel that his back symptoms were worsening. Mr. Daniel did not testify, but his affidavit indicates that claimant only attributed his right knee injury to the February 17, 2009, accident.

Claimant, who is overweight, testified that after his accident he felt discomfort in his back, but his greatest concern was his lower extremity. Moreover, he testified that following the accident he began walking with a limp and that his limp aggravated his back.

On June 5, 2009, claimant began treating with Dr. Tracy Painter. The doctor's medical notes from that date provide the following history:

Terrell is a pleasant 51-year-old male who presents to the office today complaining of right knee pain secondary to an injury, which he sustained on 02/17/2009 while working. The patient states he caught his right foot on the next to the last rung of a ladder, twisting his right leg, and falling onto his left side. He initially had acute onset of swelling and pain within his right knee. The swelling did improve but his right knee pain persists. He also has lower back pain and is seeing Jack Bell regarding that at this time. . . .²

The above appears to be the first medical record to mention claimant's back complaints. Claimant, however, testified he also told the PA about his back, but both the PA and Dr. Painter primarily focused upon the right knee. On June 17, 2009, Dr. Painter performed a partial medial meniscectomy with chondroplasty of the medial femoral condyle and patellafemoral joint.

In July 2009, claimant returned to the PA with knee and back pain. The PA recommended an MRI of the back, which was not authorized. And in September 2009, claimant was examined by orthopedic surgeon Edward J. Prostic, whose September 11, 2009, report indicates claimant injured his right knee and back in his fall from the ladder. Moreover, Dr. Prostic recorded a history that claimant's back pain worsened with walking, substantial sitting, and progressive standing. The doctor concluded his report, as follows:

On or about February 17, 2009 through the last date of employment, Terrell D. Jackson sustained injuries to his right knee and low back. He has been partially improved by debridement of his right knee. He has what appears to be sprain and strain of his lumbar spine. He is a rehabilitation challenge because of his extreme weight (he appears to be larger than the 350 pounds that he reported). He needs to start on an exercise program to restore tone in his trunk muscles. It is suggested that he be placed in a work conditioning program, leading to work hardening. Anti-inflammatory medicines by mouth would also be useful. Presently, he is unable to return to gainful employment.³

² P.H. Trans., Cl. Ex. 1.

³ P.H. Trans., Cl. Ex. 9 at 3 (Dr. Prostic's Sept. 11, 2009 report).

The ALJ found claimant's back complaints were the natural result of the February 2009 accident. This Board Member agrees. Claimant's testimony is credible that he began limping after his fall from the ladder and that walking aggravated his back symptoms. Claimant sustained a rather painful right knee injury and he is overweight. One does not have to stretch to conclude it is more probably true than not that claimant's back symptoms are directly related to his altered gait. Accordingly, the undersigned finds the preliminary hearing Order should be affirmed as claimant's back symptoms are a natural consequence of his February 2009 fall.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.⁴ Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), as opposed to the entire Board in appeals of final orders.

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Thomas Klein dated February 5, 2010, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2010.

JULIE A.N. SAMPLE
BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Matthew J. Schaefer, Attorney for Respondent and Ace Fire Underwriters Ins. Co.
Karl L. Wenger, Attorney for Respondent and Ins. Co. of State of Pennsylvania
Thomas Klein, Administrative Law Judge

⁴ K.S.A. 44-534a.